

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

v.

GUILLERMO CAMPOS-OLVERA,  
Defendant.

No. CR-10-6011-FVS

ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS

**BEFORE THE COURT** is Defendant's April 21, 2010, Motion to Dismiss. (Ct. Rec. 19). Defendant is represented by Diane E. Hehir. The Government is represented by Assistant United States Attorney Alexander C. Ekstrom. This order is intended to memorialize and supplement the Court's oral ruling.

**DISCUSSION**

Defendant argues that the federal government failed to bring the case against him in a timely manner, and the remedy is dismissal of the indictment. (Ct. Rec. 19).

**I. 30 days (18 U.S.C. § 3161(b))**

Defendant contends that the indictment should be dismissed because his speedy trial rights under 18 U.S.C. § 3161(b) have been violated. Defendant specifically argues that the Government violated his speedy trial rights by failing to indict Defendant within thirty days from his arrest on January 6, 2010.

Section 3161(b) provides that "[a]ny information or indictment charging an individual with the commission of an offense shall be

1 filed within thirty days from the date on which such individual was  
2 arrested or served with a summons in connection with such charges."  
3 18 U.S.C. § 3161(b).

4 While Defendant was arrested by a task force which included  
5 United States Marshals on January 6, 2010, he was booked into the  
6 Benton County Jail on three state warrants. He was then sentenced to  
7 either pay fines on his failure to comply or serve time to satisfy his  
8 state obligations. Defendant was held in state custody until he was  
9 brought into federal custody on February 25, 2010, on the federal  
10 indictment.

11 Contrary to Defendant's assertion, the Speedy Trial Act is not  
12 triggered by Defendant's arrest by federal authorities when he was  
13 arrested only on state warrants and incarcerated on state charges. An  
14 arrest by federal officers who immediately relinquish control of the  
15 arrestee to state officials does not trigger the 30-day period of  
16 Section 3161(b). *United States v. Benitez*, 34 F.3d 1489, 1494 (9th  
17 Cir. 1994) ("Although the federal agents initially detained appellants  
18 as a result of events flowing from a federal investigation, there was  
19 no federal arrest for § 3161(b) purposes because no federal charges  
20 were filed and because the federal authorities immediately turned  
21 appellants over to state authorities for state prosecution.").

22 The arrest warrant on the charge in this case was issued on the  
23 same date that the indictment was filed, February 9, 2010. At the  
24 time the warrant was issued, Defendant was in state custody serving  
25 time on outstanding warrants. Defendant was brought into federal  
26 custody on February 25, 2010, and thereafter arraigned on the February

1 9, 2010, federal indictment. Defendant's detention on the federal  
2 charge was thus later in time than the filing of the indictment.  
3 Based on the foregoing, Defendant's speedy trial rights under Section  
4 3161(b) were not violated.

5 **II. 90 days (18 U.S.C. § 3164)**

6 Defendant also asserts that the indictment should be dismissed  
7 because more than 90 days have elapsed following his arrest and he has  
8 not been brought to trial. 18 U.S.C. § 3164.

9 Section 3164 provides that the trial of a detained person who is  
10 being held in detention "**solely because he is awaiting trial**" must  
11 commence not later than ninety (90) days following the beginning of  
12 such continuous detention. 18 U.S.C. § 3164(a) & (b) (emphasis  
13 added).

14 While Defendant was arrested by a task force which included  
15 United States Marshals on January 6, 2010, he was in state custody at  
16 the Benton County Jail until he was brought into federal custody on  
17 the federal indictment on February 25, 2010. He was not in detention  
18 "solely because he [wa]s awaiting trial" on the federal charge until  
19 his arrest on the federal charge following the indictment. The 90-day  
20 period required by Section 3164 for the commencement of his trial has  
21 not expired.

22 **III. 70 days (18 U.S.C. § 3161(c)(1))**

23 Defendant additionally argues that the indictment should be  
24 dismissed because his speedy trial rights under 18 U.S.C. § 3161(c)(1)  
25 have been violated. Section 3161(c)(1) provides that the trial of a  
26 defendant must commence within seventy (70) days from the filing date

1 of the information or indictment or from the date the defendant first  
2 appeared before a judicial officer of the court in which such charge  
3 is pending, **whichever date last occurs**.

4 Defendant argues that the Court should use the date of  
5 indictment, rather than the date of arraignment, to determine the  
6 passage of the 70-day speedy trial clock in this case. Defendant's  
7 argument is contrary to the plain language of the statute, 18 U.S.C. §  
8 3161(c)(1). Defendant cites *United States v. Battis*, 589 F.3d 673  
9 (3rd Cir. 2009), for the proposition that the right to a speedy trial  
10 in a federal case is triggered by the indictment, and the time period  
11 under consideration commences on that date. In *Battis*, however, the  
12 Third Circuit held that, in evaluating whether the delay before trial  
13 was uncommonly long under *Barker v. Wingo*, 407 U.S. 514 (1972), a 45-  
14 month delay between federal indictment and trial weighed heavily  
15 against the Government. *Battis*, 589 F.3d at 679. In addition to  
16 being a constitutional speedy trial case, as opposed to a statutory  
17 speedy trial rights case, the facts in *Battis* differ significantly  
18 from those of the instant case where the delay between the indictment  
19 and the scheduled trial is less than three months.

20 The plain language of 18 U.S.C. § 3161(c)(1) directs that the 70-  
21 day period commence on the filing date of the information or  
22 indictment or on the date the defendant first appears before a  
23 judicial officer of the court in which such charge is pending,  
24 whichever date last occurs. Consistent with the plain language of 18  
25 U.S.C. § 3161(c)(1), the Ninth Circuit has held that, assuming that  
26 the indictment predates the initial appearance, "the 70-day period

commences only on the date when the defendant is brought before a  
'judicial officer of the court in which the matter is pending.'  
*United States v. Palomba*, 31 F.3d 1456, 1462 (9th Cir. 1994) (quoting  
18 U.S.C. § 3161(c)). Since Defendant's appearance on March 1, 2010,  
was the "date which last occurs" for purposes of Section 3161(c), the  
clock began to run on that date, not the date of the indictment. The  
70-day period required by Section 3161(c)(1) for the commencement of  
Defendant's trial has not expired.

The Court being fully advised, **IT IS HEREBY ORDERED:**

1. Defendant's Motion to Dismiss (**Ct. Rec. 19**) is **DENIED**.

2. The trial in this case, scheduled for May 3, 2010, is  
**VACATED**.

3. A change of plea hearing is set for **May 3, 2010, at 10:30  
a.m.**, in Yakima, Washington, before the Honorable Fred Van Sickle by  
video teleconference.

**IT IS SO ORDERED.** The District Court Executive is hereby  
directed to enter this order and furnish copies to counsel.

**DATED** this 29th day of April, 2010.

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S/Fred Van Sickle  
Fred Van Sickle  
Senior United States District Judge